

Exhibit 1

UNITED STATES DISTRICT COURT
for the
Northern District of California

VIRGINIA M. LAMBRIX, et al.

Plaintiff

v.

TESLA, INC.

Defendant

)

Civil Action Nos.

 3:23-cv-1145-TLT (Lead Case)
 3:23-cv-1496-TLT
 3:23-cv-1543-TLT
 3:23-cv-2035-TLT
 3:23-cv-2352-TLT

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: Hendrick Automotive Group, LLC, HAG Automotive Investments, Inc., Attn.: Tax Dep't; 6000 Monroe Road, Charlotte, NC 28212

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Attachment A.

| | |
|---|--------------------------------------|
| Place: Chaplin & Associates, Inc. 132 Joe Knox Ave, Suite 100-G Mooresville, NC 28117 | Date and Time: 10/28/2024 5:00 pm |
|---|--------------------------------------|

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

| | |
|--------|----------------|
| Place: | Date and Time: |
|--------|----------------|

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 09/27/2024

CLERK OF COURT

OR

/s/ Ari Holtzblatt

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Defendant, Tesla, Inc., who issues or requests this subpoena, are:

Ari Holtzblatt, Wilmer Cutler Pickering Hale and Dorr LLP, 2100 Pennsylvania Avenue NW,
Washington, DC 20037, (202) 663-6000, Ari.Holtzblatt@wilmerhale.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for (name of individual and title, if any) _____
on (date) _____.

I served the subpoena by delivering a copy to the named person as follows: _____

on (date) _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____
Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

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15 *Attorneys for Defendant Tesla, Inc.*

16 **UNITED STATES DISTRICT COURT**

17 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

18 VIRGINIA M. LAMBRIX, *et al.*, on behalf
of themselves and all others similarly
situated,

19 Plaintiffs,

20 v.

21 TESLA, INC.,

22 Defendant.

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24) Case No. 3:23-cv-1496-TLT
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1 This is an attachment to a subpoena pursuant to the authority of the United States District
2 Court for the Northern District of California requiring you to produce certain documents,
3 electronic files, and/or tangible things identified below. This attachment provides definitions,
4 instructions, and specific document commands. The subpoena must be responded to, in writing,
5 within thirty days of service. Please make production to Chaplin & Associates, Inc., 132 Joe
6 Knox Ave, Suite 100-G, Mooresville, NC 28117, or pursuant to alternative arrangement to which
7 all parties subsequently agree.

DEFINITIONS

9 1. The definitions and rules of construction set forth in Rules 26 and 45 of the Federal
10 Rules of Civil Procedure are hereby incorporated and apply to the production commands herein.

11 2. The words "any," "all," "each," or "every" shall mean "any, all, each, and every."

12 3. The connectives “and” and “or” shall be construed either conjunctively or

13 disjunctively as necessary to bring within the scope of the production commands all information
14 that might otherwise be construed as outside of their scope.

15 4. The term "body work" refers to any services performed on the non-moving parts of
16 a passenger automobile's physical exterior.

17 5. “Communication” or “Communications” has the broadest meaning permitted under
18 the Federal Rules of Civil Procedure, and includes any transmission of information two or more
19 persons, whether by, without limitation: personal meeting, telephone, letter, telegraph, e-mail,
20 electronic bulletin board, electronic “chat room,” instant message, text message, any other form of
21 electronic correspondence, teleconference, facsimile, telex, or any other means whatsoever.

22 6. “Complaint” means the Second Consolidated Amended Class Action Complaint
23 filed in the above-captioned case (ECF No. 131), as well as any subsequent amended complaints in
24 the above-captioned case.

25 7. The word "concerning" and the term "relating to" shall be given the broadest
26 meaning possible, including constituting, referencing, evidencing, reflecting, incorporating,
27 effecting, including, or otherwise referring, pertaining, or relating to, either directly or indirectly, or
28 being in any way logically or factually connected with, the subject matter of the production

1 command. Commands for “documents concerning” any subject matter include, without limitation,
2 documents concerning communications regarding that subject matter.

3 8. The word “dealership” means any automobile sales, leasing, or service franchise in
4 the United States.

5 9. “Document” or “Documents” shall have the broadest meaning permitted under the
6 Federal Rules of Civil Procedure and relevant case law, and shall include without limitation all
7 electronic or computerized data compilations, electronic chats, email communications, other
8 electronically stored information from personal computers, voice recordings, handwritten notes,
9 hard copy documents, all drafts and preliminary copies of any of the foregoing, and all other forms
10 or types of written or printed matter or tangible things on which any words, phrases, or numbers are
11 affixed, however denominated, by whomever prepared, and to whomever addressed, which are in
12 your possession, custody, or control or to which you have, have had, or can obtain access. A copy
13 or a duplicate of a document that has any notes, annotations, or other markings, and any preliminary
14 version, draft, or revision of any document, shall be considered a separate document within the
15 meaning of this term.

16 10. The term “electric vehicle” or “EV” refers to any passenger automobile that has an
17 electric motor instead of an internal combustion engine.

18 11. The term “ICE vehicle” refers to any passenger automobile that has an internal
19 combustion engine. For purposes of responding to the production commands in this subpoena,
20 “ICE vehicle” includes any “hybrid” vehicle that uses both an internal combustion engine and an
21 electric motor.

22 12. The words “includes” and “including” shall be construed as non-exhaustive and
23 without limitation, whether or not so specified.

24 13. The term “maintenance or repair services” refers to all work performed on the
25 interior components or moving parts of a passenger automobile.

26 14. The term “OEM parts” refers to any replacement automobile parts constructed by
27 the entity that manufactured the original part used when the vehicle was newly constructed. By
28 contrast, the term “non-OEM parts” refers to any replacement automobile parts made by an entity

1 other than the entity that manufactured the original part used when the vehicle was newly
2 constructed.

3 15. The term “right to repair movement” refers to any person or organization who
4 advocates for the legal right of consumers to freely repair or modify their automobiles, including
5 by requiring manufacturers to make repair information, diagnostic tools, and replacement parts
6 publicly available.

7 16. “Tesla” refers to Tesla, Inc., as well as any other subsidiaries or affiliated
8 companies of Tesla, and any of Tesla’s agents or employees.

9 17. The terms "You," "Your," and "Hendrick" mean Hendrick Automotive Group
10 LLC. as well as any agents, employees, attorneys, and other representative acting on behalf of
11 Hendrick Automotive Group LLC.

12 18. The use of the singular form of any word includes the plural and vice versa.

13 19. The use of a verb in any particular tense shall be construed as the use of the verb in
14 all other tenses whenever necessary to bring within the scope of a production command any
15 documents or information that you might otherwise construe to be outside the scope of the
16 production command.

17 20. The use of date ranges includes the first and last dates of the specified period.

18 21. To the extent not defined above, all terms in these production commands shall be
19 given their plain and ordinary meaning.

20 22. To the extent these production commands employ terms used in the Complaint,
21 such use is without prejudice to the rights of Tesla.

INSTRUCTIONS

23 1. Each document shall be produced in its entirety without redaction or correction and
24 including all attachments, enclosures, cover letters, memoranda, and appendices, except as to
25 privileged information separately discussed below.

26 2. Where production of a document is commanded, the command includes all
27 documents in Your possession, custody, or control or in the possession, custody, or control of

1 Your attorneys, representatives, agents, and other persons under Your control who are reasonably
2 likely to have documents responsive to the production command.

3 3. In searching for documents or information responsive to any of these production
4 commands, You must search computer or electronic files, e-mails, voicemails, work files, desk
5 files, calendars and diaries, and any other locations and sources where documents or information
6 of the type to be produced might plausibly be expected to be found.

7 4. The production commands shall be deemed continuing so as to require prompt
8 supplemental responses and production if You obtain or discover additional responsive documents
9 between the time of initial production and the final disposition of the above-captioned action and
10 any appeals.

11 5. Should You find the meaning of any term in these production commands to be
12 unclear, You should assume a reasonable meaning, state what the assumed meaning is, and
13 respond to the command on the basis of that assumed meaning.

14 6. If You object to any production command or portion thereof on the ground that
15 You contend that it calls for a Document that is privileged, falls within the work product doctrine,
16 or is otherwise protected from disclosure, provide a privilege log that complies with Federal Rule
17 of Civil Procedure 26(b)(5).

18 7. If no Documents are responsive to a particular command, You are to state that no
19 responsive Documents exist.

20 8. If any responsive document has existed, but has since been lost, destroyed, or is no
21 longer within Your possession, custody, or control, identify the document, its author(s), the
22 recipient(s) or addressee(s), the subject matter, and the content. Further, if the document has been
23 destroyed, state with particularity the date and circumstances surrounding the destruction, and
24 identify the last known custodian of the document and each person who has knowledge of the
25 destruction.

26 9. Unless otherwise specified, the Relevant Time Period for the production commands
27 below is from January 1, 2019 to the present. If You object to a command's scope or time period,
28

1 please state Your objection and respond to the command for the scope or time period You believe
2 is appropriate.

3 10. Produce all documents in electronic format in accordance with the ESI Protocol
4 (Dkt. 187) attached hereto.

5 11. If You require an extension on the return date or wish to confer regarding the scope
6 of these commands, please contact Andres Salinas of WilmerHale at (212) 295-6318 or
7 andres.salinas@wilmerhale.com.

DOCUMENTS THAT MUST BE PRODUCED

9 1. Documents and Communications sufficient to show the scope of competition
10 between You and Tesla for the sale or lease of passenger automobiles, including strategy
11 documents, business plans, competitive assessments, and plans affected by competition from
12 Tesla.

13 2. All Documents and Communications concerning competition for the sale or lease
14 of passenger automobiles between You and manufacturers of EVs that do not use franchise
15 dealerships, including any discussion of the viability of the dealership model in light of
16 competition from manufacturers of EVs that do not use franchise dealerships and any discussion
17 of plans to offer passenger automobiles for sale or lease directly to consumers.

18 3. All Documents and Communications analyzing or assessing competition between
19 or among EVs and ICE vehicles.

20 4. Documents sufficient to show any efforts to lobby for laws restricting or
21 inhibiting the direct sale or lease of passenger automobiles without use of a franchise dealership.

22 5. All Documents relating to policies or procedures governing automobile
23 maintenance or repair services performed by Your dealerships or repair centers.

24 6. All Documents assessing the ability of any of Your dealerships to perform
25 maintenance or repair services or body work on Tesla vehicles.

26 7. All Documents and Communications analyzing or assessing competition for
27 maintenance or repair services on passenger automobiles.

1 8. All Documents and Communications analyzing or assessing competition for body
2 work on passenger automobiles.

3 9. All Documents relating to policies or procedures regarding the purchase or
4 procurement of OEM parts by any of Your dealerships or repair centers.

5 10. All Documents relating to policies or procedures regarding the use of non-OEM
6 parts by any of Your dealerships or repair centers when performing maintenance or repair
7 services on passenger automobiles.

8 11. All Documents and Communications analyzing or assessing the advantages or
9 disadvantages of using OEM parts or the advantages or disadvantages of using non-OEM parts
10 when providing maintenance and repair services to consumers.

11 12. All Documents and Communications analyzing or assessing competition for the
12 manufacture or sale of replacement automobile parts for EVs.

13 13. Documents sufficient to show, on a monthly and annual basis, the profits and
14 losses of any of Your dealerships associated with the (a) sale of automobiles, (b) lease of
15 automobiles, (c) maintenance or repair services, (d) body work, and (e) replacement automobile
16 parts.

17 14. Documents sufficient to show, on a monthly basis, the prices (including labor
18 costs and any surcharges) that any of Your dealerships charged to customers for maintenance or
19 repair services, body work, or replacement automobile parts.

20 15. All Documents and Communications discussing how the performance of
21 maintenance or repair services or body work by any of Your dealerships affects Your revenue,
22 profits, or losses.

23 16. All Documents and Communications analyzing, assessing, or relating to the right
24 to repair movement.

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2 Dated: September 27, 2024
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WILMER CUTLER PICKERING
HALE AND DORR LLP

5 By: /s/ Ari Holtzblatt
6 Ari Holtzblatt
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36 *Attorneys for Defendant Tesla, Inc.*

37 [Additional counsel listed on signature
38 page]

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1 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties
 2 acknowledge that this Order does not confer blanket protections on all disclosures or responses to
 3 discovery and that the protection it affords from public disclosure and use extends only to the limited
 4 information or items that are entitled to confidential treatment under the applicable legal principles.
 5 The parties further acknowledge, as set forth in Section 14.5, below, that this Stipulated Protective
 6 Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth
 7 the procedures that must be followed and the standards that will be applied when a party seeks
 8 permission from the court to file material under seal.

9 **2. DEFINITIONS**

10 2.1 Objecting Party: a Party that challenges the designation of information or items under
 11 this Order.

12 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
 13 generated, stored, or maintained) or tangible things that: (1) qualify for protection under Federal Rule
 14 of Civil Procedure 26(c); (2) contain any trade secret, or other confidential research, development, or
 15 commercial information, as such terms are used in Fed. R. Civ. P. 26(c)(1)(G); (3) are prohibited from
 16 disclosure by statute; (4) constitute proprietary business, insurance, or financial information that a
 17 Party has maintained as confidential; or (5) contain any private personal information. Confidential
 18 information includes: (i) information copied or extracted, summarized, or compiled from Confidential
 19 Information; and (ii) testimony, conversations, or presentations by Parties or their Counsel that might
 20 reveal Confidential Information.

21 2.3 Counsel (without qualifier): Outside Counsel of Record and In-House Counsel (as well
 22 as their support staff).

23 2.4 Consultants: consultants involved in a matter pertinent to the Litigation who (1) have
 24 been retained by a Party or its Counsel, (2) is not a past or current employee or contractor of a Party
 25 (not including their retention in this Litigation) or of a Party’s competitor, and (3) at the time of
 26 retention, is not anticipated to become an employee or contractor of a Party (not including their
 27 retention in this Litigation) or of a Party’s competitor.

2.5 Designated House Counsel are In-House Counsel who seek access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

2.6 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

2.7 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.8 Expert: a person with specialized knowledge or experience in a matter pertinent to the Litigation who (1) has been retained by a Party or its Counsel to serve as an expert witness or as a consultant in this action, (2) is not a past or current employee or contractor of a Party (not including their retention in this Litigation) or of a Party's competitor, and (3) at the time of retention, is not anticipated to become an employee or contractor of a Party (not including their retention in this Litigation) or of a Party's competitor.

2.9 **HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY** Information or Items: highly sensitive “Confidential Information or Items” that is the subject of reasonable efforts to maintain its secrecy, such that the Designating Party reasonably and in good faith believes disclosure of which to another Party or Non-Party would create a substantial risk of monetary or non-monetary injury (including, for example, competitive or commercial disadvantage) to the Designating Party or its employees, customers, or clients. This includes but is not limited to computer code and associated comments and revision histories, engineering specifications, or schematics that define or otherwise describe in detail the structure of proprietary software or hardware designs.

2.10 In-House Counsel: any attorneys who are employees of a Party to this action, as well as paralegals, secretaries, and clerical and administrative personnel employed by a Party. In-House Counsel excludes Outside Counsel.

1 2.11 Litigation: the above-captioned *Lambrix et al. v. Tesla, Inc.*, No. 3:23-cv-1145-TLT
 2 (N.D. Cal.) and any later-filed actions and/or actions consolidated with *Lambrix*.¹

3 2.12 Mock Jurors: mock jurors involved in a matter pertinent to the Litigation who (1) have
 4 been retained by a Party or its Counsel, (2) are not past or current employees of a Party or of a Party's
 5 competitor, and (3) at the time of retention, are not anticipated to become employees of a Party or of
 6 a Party's competitor.

7 2.13 Non-Party: any natural person, partnership, corporation, association, or other legal
 8 entity not named as a Party to this action.

9 2.14 Outside Counsel: attorneys employed by outside law firms representing a Party in this
 10 proceeding, as well as attorney support staff.

11 2.15 Party: any party to this action, including all its officers, directors, employees,
 12 consultants, retained experts, and Outside Counsel (and their support staff).

13 2.16 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material
 14 in this action.

15 2.17 Professional Vendors: persons or entities that provide litigation support services (e.g.,
 16 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing,
 17 or retrieving data in any form or medium) and their employees and subcontractors involved in a matter
 18 pertinent to the Litigation who (1) have been retained by a Party or its Counsel, (2) are not past or
 19 current employees of a Party or of a Party's competitor, and (3) at the time of retention, are not
 20 anticipated to become employees of a Party or of a Party's competitor.

21 2.18 Protected Material: any Disclosure or Discovery Material that is designated as
 22 "CONFIDENTIAL" or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

23 2.19 Receiving Party: a Party that receives Disclosure or Discovery Material from a
 24 Producing Party in the Litigation.

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 27 ¹ Plaintiffs reserve the right to seek modification of this Stipulated Protective Order to encompass
 28 any future arbitrations involving claims substantially similar to those raised in this Litigation.
 Defendant reserves the right to object to such modification.

1 3. **SCOPE**

2 The protections conferred by this Stipulation and Order cover not only Protected Material (as
 3 defined above), but also (1) any information copied or extracted from Protected Material; (2) all
 4 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
 5 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
 6 However, the protections conferred by this Stipulation and Order do not cover the following
 7 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
 8 Party or becomes part of the public domain at the time of disclosure to a Receiving Party or becomes
 9 part of the public domain after its disclosure to a Receiving Party as a result of publication not in
 10 violation of this Order, including becoming part of the public record through trial or otherwise and (b)
 11 any information known to the Receiving Party prior to the disclosure or obtained by the Receiving
 12 Party after the disclosure from a source who obtained the information lawfully and under no obligation
 13 of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed
 14 by a separate agreement or order.

15 4. **DURATION**

16 Even after final disposition of this Litigation, the confidentiality obligations imposed by this
 17 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
 18 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
 19 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
 20 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time
 21 limits for filing any motions or applications for extension of time pursuant to applicable law.

22 5. **DESIGNATING PROTECTED MATERIAL**

23 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
 24 Non-Party that designates information or items for protection under this Order must take care to limit
 25 any such designation to specific material that qualifies under the appropriate standards. To the extent
 26 it is practical to do so, the Designating Party must designate for protection only those parts of material,
 27 documents, items, or oral or written communications that qualify – so that other portions of the

1 material, documents, items, or communications for which protection is not warranted are not swept
 2 unjustifiably within the ambit of this Order.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations by any Party that
 4 are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
 5 unnecessarily encumber or retard the case development process or to impose unnecessary expenses
 6 and burdens on other parties) expose the Designating Party to sanctions.

7 If it comes to a Designating Party's attention that information or items that it designated for
 8 protection do not qualify for protection at all or do not qualify for the level of protection initially
 9 asserted, that Designating Party must promptly notify all other Parties that it is withdrawing the
 10 mistaken designation.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
 12 e.g., the second paragraph of Section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure
 13 or Discovery Material that qualifies for protection under this Order must be clearly so designated
 14 before the material is disclosed or produced.

15 Designation in conformity with this Order requires:

16 (a) for information in documentary form (e.g., paper or electronic documents, but
 17 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
 18 affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
 19 ONLY" to every page of the document. If only a portion or portions of the material on a page qualifies
 20 for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
 21 appropriate markings in the margins).

22 A Party or Non-Party that makes original documents or materials available for inspection need
 23 not designate them for protection until after the inspecting Party has indicated which material it would
 24 like copied and produced. During the inspection and before the designation, all of the material made
 25 available for inspection shall be deemed "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
 26 ONLY." After the inspecting Party has identified the documents it wants copied and produced, the
 27 Producing Party must determine which documents, or portions thereof, qualify for protection under

1 this Order. Then, before producing the specified documents, the Producing Party must affix the
2 appropriate “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
3 legend to each page that contains Protected Material. If only a portion or portions of the material on a
4 page qualifies for protection, the Producing Party also must clearly identify the protected portion(s)
5 (e.g., by making appropriate markings in the margins).

6 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
7 Designating Party identify on the record, before the close of the deposition, hearing, or other
8 proceeding, all protected testimony and specify the level of protection being asserted. When it is
9 impractical to identify separately each portion of testimony that is entitled to protection and it appears
10 that substantial portions of the testimony may qualify for protections, the Designating Party may
11 invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right to have
12 up to 30 days after receipt of the final deposition transcript or a copy thereof, identify the specific
13 portions of the testimony as to which protection is sought, to specify the level of protections being
14 asserted. Unless all parties agree otherwise on the record at the time the deposition testimony is taken,
15 all deposition testimony taken in this case shall be treated as Highly Confidential Information for a
16 period of 30 days after the transcript is delivered to the party being deposed. Only those portions of
17 the testimony that are appropriately designed for protection within the 30 days shall be covered by the
18 provisions of this Order. After the expirations of that period, the transcript shall be treated only as
19 actually designated;

20 (c) A Party shall give the other Parties notice if it reasonably expects a deposition, hearing,
21 or other proceeding to include Protected Material so that all Parties can ensure that only authorized
22 individuals who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) are
23 present at the time Protected Material is discussed. The use of a document as an exhibit at a deposition
24 shall not in any way affect its designation as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –
25 ATTORNEYS’ EYES ONLY.”

26 (d) for information produced in some form other than documentary and for any other
27 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or

containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s). To the extent a document is produced in a form in which placing or affixing the word “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” on the document is not practicable, the Producing Party may designate the document as confidential by cover letter or slip sheet, or by affixing a label to the production media containing the document.

(e) Transcripts containing Protected Material shall have an obvious legend on the title page that the transcript contains Protected Material, and the Designating Party shall provide any other Party with a list of all pages (including line numbers as appropriate) designated as Protected Material, including the level of protection being asserted by the Designating Party. The Designating Party shall inform the court reporter of these requirements. In the event that the Designating Party complies with this Order, any error by a court reporter will not constitute a waiver of protection.

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party's right to secure protection under this Order for such material. A Party may correct an inadvertent failure to designate by supplemental written notice, provided that at the time of designation the material must still qualify under this order and applicable legal principles for the protection designation. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order. No Party shall be found to have violated this Order for failing to maintain the confidentiality of material during a time when that material has not been designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," even where the failure to so designate was inadvertent and where the

1 material is subsequently designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
 2 ATTORNEYS’ EYES ONLY.”

3 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 6.1 Timing of Challenges. Any Party may challenge a designation of confidentiality at any
 5 time. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to
 6 avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption
 7 or delay of the Litigation, a Party does not waive its right to challenge a confidentiality designation by
 8 electing not to mount a challenge promptly after the original designation is disclosed.

9 6.2 Meet and Confer. The Objecting Party shall initiate the dispute resolution process by
 10 providing written notice of each designation it is challenging and describing the basis for each
 11 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite
 12 that the challenge to confidentiality is being made in accordance with this specific paragraph of the
 13 Protective Order and shall identify the Disclosure or Discovery Material at issue by document and/or
 14 production number, range, or category or type of documents or information, as applicable, with
 15 sufficient specificity that the Designating Party can determine what designations are being challenged,
 16 and to the extent practical, shall generally explain why the Challenging Party does not believe the
 17 material is entitled to the designation. The parties shall attempt to resolve each challenge in good faith
 18 and must begin the process by conferring directly (in voice to voice dialogue; other forms of
 19 communication are not sufficient) within 14 days of the date of service of notice. In conferring, the
 20 Objecting Party must explain the basis for its belief that the confidentiality designation was not proper
 21 and must give the Designating Party an opportunity to review the designated material, to reconsider
 22 the circumstances, and, if no change in designation is offered, to explain the basis for the chosen
 23 designation. The Objecting Party may proceed to the next stage of the challenge process only if it has
 24 engaged in this meet and confer process first or establishes that the Designating Party is unwilling to
 25 participate in the meet and confer process in a timely manner.

26 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
 27 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
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1 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the initial
2 notice of challenge or within 14 days of the parties agreeing that the meet and confer process will not
3 resolve their dispute, whichever is earlier. Each such motion must be accompanied by a competent
4 declaration affirming that the movant has complied with the meet and confer requirements imposed in
5 the preceding paragraph. Failure by the Designating Party to make such a motion including the
6 required declaration within 21 days (or 14 days, if applicable) shall automatically waive the
7 confidentiality designation for each challenged designation. In addition, the Objecting Party may file
8 a motion challenging a confidentiality designation at any time if there is good cause for doing so,
9 including a challenge to the designation of a deposition transcript or any portions thereof. Any motion
10 brought pursuant to this provision must be accompanied by a competent declaration affirming that the
11 movant has complied with the meet and confer requirements imposed by the preceding paragraph.

12 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
13 Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary
14 expenses and burdens on other parties) may expose the Objecting Party to sanctions. All parties shall
15 continue to afford the material in question the level of protection to which it is entitled under the
16 Producing Party's designation until the court rules on the challenge.

17 | 7. ACCESS TO AND USE OF PROTECTED MATERIAL

18 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
19 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
20 defending, or attempting to settle this Litigation. Such Protected Material may be disclosed only to the
21 categories of persons and under the conditions described in this Order. When the Litigation has been
22 terminated, a Receiving Party must comply with the provisions of Section 15 below (FINAL
23 DISPOSITION).

24 Protected Material must be stored and maintained by a Receiving Party at a location and in a
25 secure manner that ensures that access is limited to the persons authorized under this Order.

26 (a) Each Party must make reasonable efforts to protect the confidentiality of all documents
27 subject to the Protective Order that are disclosed or produced to that Party, including storing all

1 documents on secured systems and platforms.

2 (b) Any Party who learns of a breach impacting the integrity or security of such system or
 3 platform must promptly notify the disclosing or producing Party of the scope and nature of that breach
 4 and make reasonable efforts to remedy the breach.

5 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by
 6 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
 7 information or item designated “CONFIDENTIAL” only to:

8 (a) the Receiving Party’s Outside Counsel;

9 (b) the Receiving Party, as an individual named plaintiff or class representative in the
 10 Litigation who signs the “Acknowledgment and Agreement to Be Bound” (Exhibit A), shall be
 11 permitted to view “CONFIDENTIAL” information to the extent it is reasonably necessary to prosecute
 12 their claims, but shall not take possession of such information;

13 (c) the officers, directors, and employees (including In-House Counsel and former
 14 employees) of the Parties to whom disclosure is reasonably necessary for this Litigation and who have
 15 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

16 (d) Experts of the Receiving Party;

17 (e) the Court and its personnel;

18 (f) court reporters and their staff, professional jury or trial consultants, mock jurors, and
 19 Professional Vendors to whom disclosure is reasonably necessary for this Litigation and who have
 20 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

21 (g) during their depositions, witnesses who are employees or corporate designees of the
 22 Producing Party. Pages of transcribed deposition testimony or exhibits to depositions that reveal
 23 Protected Material must be separately bound by the court reporter and may not be disclosed to anyone
 24 except as permitted under this Stipulated Protective Order. Witnesses shall not retain a copy of
 25 documents containing Confidential Information, except witnesses may receive a copy of all exhibits
 26 marked at their depositions in connection with their review of the transcripts(s);

27 (h) the author(s), custodian(s), or recipient(s) of a document containing the information or

1 a custodian or other person who otherwise possessed or knew the information.

2 (i) any mediators, secretaries, paraprofessional assistants, and other employees of such
3 mediators who are actively engaged in assisting the mediators in connection with this matter.

4 (j) other persons only by written consent of the Producing Party or upon order of the Court
5 and on such conditions as may be agreed or ordered, but such consent shall not be unreasonably
6 withheld.

7 To the extent any person is required to complete the certification contained in Attachment A
8 to this Order, facsimile signatures or signatures transferred in electronic format (e.g., PDF) shall be
9 treated as original signatures for purposes of this Order.

10 7.3. Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information
11 or Items. No documents or information designated as “HIGHLY CONFIDENTIAL – ATTORNEYS’
12 EYES ONLY” shall be disclosed to any third party, except by written stipulation of the Parties, by
13 order of the Court, or as otherwise provided herein. Unless otherwise ordered by the court or permitted
14 in writing by the Designating Party, a Receiving Party may disclose any information or item designated
15 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

16 (a) the Receiving Party’s Outside Counsel in this action, as well as employees of said
17 Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this
18 Litigation;

19 (b) Designated House Counsel of the Receiving Party (1) who has no involvement in
20 competitive decision-making, (2) to whom disclosure is reasonably necessary for this litigation, (3)
21 who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

22 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this
23 Litigation, (2) who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

24 (d) the Court and its personnel;

25 (e) court reporters and their staff, professional jury or trial consultants, mock jurors, and
26 Professional Vendors to whom disclosure is reasonably necessary for this Litigation and who have
27 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) the author(s), custodian(s), or recipient(s) of a document containing the information or a custodian or other person who otherwise possessed or knew the information

(g) during their depositions, witnesses who are 30(b)(6) designees of the Producing Party to whom disclosure is reasonably necessary, provided that counsel for the Party intending to disclose the information has a good faith basis for believing such “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” is relevant to events, transactions, discussions, communications, or data about which the corporate designee witness is expected to testify or about which the corporate designee witness may have knowledge. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Protective Order.

(h) mediators or other alternative dispute resolution neutrals (including their employees, agents, and contractors) to whom disclosure is reasonably necessary to their involvement in the Litigation.

(i) other persons only by written consent of the Producing Party or upon order of the Court and on such conditions as may be agreed or ordered, but such consent shall not unreasonably be withheld.

To the extent any person is required to complete the certification contained in Attachment A to this Order, facsimile signatures or signatures transferred in electronic format (e.g., PDF) shall be treated as original signatures for purposes of this Order.

7.4. **HIGHLY CONFIDENTIAL – SOURCE CODE**. In the event that documents that are “HIGHLY CONFIDENTIAL – SOURCE CODE” are contemplated to be produced, the Parties will negotiate a separate protective order to govern such information. This includes extremely sensitive “Confidential Information or Items” representing computer code and associated comments and revision histories, formulas, engineering specifications, or schematics that define or otherwise describe in detail the algorithms or structure of software or hardware designs, disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

1 **8. PROSECUTION BAR**

2 Absent written consent from the Producing Party, any individual who receives access to
 3 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information shall not be involved
 4 in the prosecution of patents or patent applications relating to the subject matter of the invention
 5 and of highly confidential technical information produced, including without limitation the patents
 6 asserted in this action and any patent or application claiming priority to or otherwise related to the
 7 patents asserted in this action, before any foreign or domestic agency, including the United States
 8 Patent and Trademark Office (“the Patent Office”). For purposes of this paragraph, “prosecution”
 9 includes directly or indirectly drafting, amending, advising, or otherwise affecting the scope or
 10 maintenance of patent claims.² To avoid any doubt, “prosecution” as used in this paragraph does
 11 not include representing a party challenging a patent before a domestic or foreign agency
 12 (including, but not limited to, a reissue protest, *ex parte* reexamination or *inter partes*
 13 reexamination). This Prosecution Bar shall begin when access to “HIGHLY CONFIDENTIAL –
 14 ATTORNEYS’ EYES ONLY” information is first received by the affected individual and shall
 15 end two (2) years after final termination of this action.

16 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
 17 **LITIGATION**

18 If a Party is served with a subpoena or a court order issued in other litigation that compels
 19 disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY
 20 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” that Party must:

21 (a) promptly notify in writing the Designating Party. Such notification shall include a copy
 22 of the subpoena or court order;

23 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
 24 other litigation that some or all of the material covered by the subpoena or order is subject to this
 25 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its Protected Material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

**10. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN
THIS LITIGATION**

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in connection with this Litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid subpoena, court order, or discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party. This provision is without waiver of a Party's right to object to any discovery request or subpoena seeking

1 a Non-Party's confidential information in its possession.

2 (c) A Non-Party must object or seek a protective order within 14 days of receiving notice
 3 and accompanying information, as described in Section 10(b). If the Non-Party fails to timely object
 4 or seek a protective order from this Court, the Receiving Party may produce the Non-Party's
 5 confidential information responsive to the discovery request. If the Non-Party timely seeks a protective
 6 order, the Receiving Party shall not produce any information in its possession or control that is subject
 7 to the confidentiality agreement with the Non-Party before a determination by the Court. Absent a
 8 court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in
 9 this court of its Protected Material.

10 **11. ABSENT CLASS MEMBERS**

11 Should the Parties propose a class settlement to the Court, the Parties agree to discuss a
 12 protocol for sharing any Protected Material contained in a filing with the Court following the
 13 procedures set forth herein with any Absent Class Member (or, if represented, with Absent Class
 14 Members' counsel).

15 **12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

16 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
 17 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
 18 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
 19 disclosures and to the extent feasible identify the Bates-labeled number of the unauthorized disclosure,
 20 (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) if feasible,
 21 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
 22 Order, and (d) if feasible, request such person or persons to execute the "Acknowledgment and
 23 Agreement to Be Bound" that is attached hereto as Exhibit A.

24 **13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
 25 **MATERIAL**

26 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced
 27 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties

1 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
 2 modify whatever procedure may be established in an e-discovery order that provides for production
 3 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
 4 parties reach an agreement on the effect of disclosure of a communication or information covered by
 5 the attorney-client privilege or work product protection, the parties may incorporate their agreement
 6 in the stipulated protective order submitted to the Court.

7 **14. MISCELLANEOUS**

8 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
 9 its modification by the court in the future.

10 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
 11 no Party waives any right it otherwise would have to object to disclosing or producing any information
 12 or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives
 13 any right to object on any ground to use in evidence of any of the material covered by this Protective
 14 Order.

15 14.3 Export Control. Disclosure of Protected Material shall be subject to all applicable laws
 16 and regulations relating to the export of technical data contained in such Protected Material, including
 17 the release of such technical data to foreign persons or nationals in the United States or elsewhere. The
 18 Producing Party shall be responsible for identifying any such controlled technical data, and the
 19 Receiving Party shall take measures necessary to ensure compliance.

20 14.4 Copy of Order. When discovery is sought from a Non-Party in this action after entry
 21 of this Order, a copy of this Order must accompany the discovery request.

22 14.5 Filing Protected Material. Without written permission from the Designating Party or a
 23 court order secured after appropriate notice to all interested persons, a Party may not file in the public
 24 record in this action any Protected Material. A Party that seeks to file under seal any Protected Material
 25 must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to
 26 a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local
 27 Rule 79-5, a sealing order will issue only upon a request establishing that the Protected Material at
 28

1 issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a
 2 Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(e) is
 3 denied by the court, then the Receiving Party may file the Protected Material in the public record
 4 pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

5 14.6 Future Parties. The terms of this Order shall be binding upon all current and future
 6 parties to this Litigation and their counsel; any party appearing in the Litigation following entry of this
 7 Order shall be deemed to have joined the case subject to its provisions.

8 14.7 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
 9 its modification by the Court in the future.

10 14.8 This Protective Order may be modified by the Court at any time for good cause shown
 11 following notice to all parties and an opportunity for them to be heard.

12 15. **FINAL DISPOSITION**

13 Within 60 days after the final disposition of this action, as defined in Section 4 (DURATION),
 14 each Receiving Party must return all Protected Material to the Producing Party or destroy such
 15 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
 16 compilations, summaries, and any other format reproducing or capturing any of the Protected Material.
 17 Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written
 18 certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by
 19 the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected Material that
 20 was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,
 21 abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected
 22 Material. Notwithstanding this provision, Counsel otherwise authorized to receive Protected Material
 23 pursuant to this Order are entitled to retain an archival copy of all pleadings, motion papers, trial,
 24 deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,
 25 expert reports, attorney work product, and consultant and expert work product, even if such materials
 26 contain Protected Material. Any such archival copies that contain or constitute Protected Material
 27 remain subject to this Protective Order as set forth in Section 4 (DURATION).

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2 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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4 DATED: July 19, 2024


HON. TRINA L. THOMPSON
United States District Judge

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STIPULATED PROTECTIVE ORDER

Case 3:24-mc-00167-FDW-DCK Document 2-1 Filed 12/17/24 Page 31 of 58

1

EXHIBIT A

2

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of LAMBRIX, *et al.* v. TESLA, INC., Case No. 23-CV-01145-TLT. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

12

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

15

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

19

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Date: _____

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City and State where sworn and signed: _____

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Printed name: _____

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Signature: _____

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2 Dated: July 15, 2024

3 /s/ Ari Holtzblatt
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1 **E-FILING ATTESTATION**

2 I, Matthew W. Ruan, am the ECF User whose ID and password are being used to file this
3 document. In compliance with Civil Local Rule 5-1(h)(3), I hereby attest that each of the
4 signatories identified above has concurred in this filing.

5 */s/ Matthew W. Ruan*
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[Additional counsel listed on signature page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

VIRGINIA M. LAMBRIX, *et al.*,
Plaintiff,
v.
TESLA, INC.,
Defendant

Case No. 23-CV-01145-TLT-PHK

STIPULATED PROTOCOL AND
[PROPOSED] ORDER FOR DISCOVERY
OF ELECTRONICALLY STORED
INFORMATION AND PAPER
DOCUMENTS AND SEARCH
METHODOLOGY

I. PURPOSE

This Order (“ESI Protocol & Search Methodology Order”) will govern discovery of

STIPULATED PROTOCOL AND [PROPOSED] ORDER FOR DISCOVERY OF
ELECTRONICALLY STORED INFORMATION AND PAPER DOCUMENTS
AND SEARCH METHODOLOGY
CASE NO. 23-CV-01145-TLT

1 electronically stored information ("ESI") in this case as a supplement to the Federal Rules
 2 of Civil Procedure, this Court's Guidelines for the Discovery of Electronically Stored
 3 Information, and any other applicable orders and rules. This binds all parties and their
 4 counsel of record in this Action (collectively, the "Parties"). The failure of this Protocol to
 5 address any issue is without prejudice to any position that a Party may take on that issue. To
 6 the extent that an issue is not addressed by a provision herein, the Federal Rules of Civil
 7 Procedure, the Northern District of California eDiscovery Guidelines, and other applicable
 8 Standing Orders and Guidelines of this Court control, unless the Parties agree otherwise or
 9 ask the Court to decide on a particular issue.

10 **II. COOPERATION**

11 The Parties are aware of the importance the Court places on cooperation and commit to
 12 cooperate in good faith throughout the matter consistent with the Federal Rules of Civil
 13 Procedure and the Court's Guidelines for the Discovery of Electronically Stored Information
 14 ("ESI Guidelines"). Section 1.02 of the ESI Guidelines states that the Court expects
 15 cooperation on issues relating to the preservation, collection, search, review, and production
 16 of ESI, particularly in the earliest possible stages of discovery.

17 **III. ESI LIAISONS**

18 **A. Designation:** Each Party has designated an ESI Liaison: Stephen Teti (Plaintiffs) and
 19 Arielle Herzberg (Defendant). Any Party is free to change its designated ESI Liaison by
 20 providing written notice to the other Parties.

21 **B. Duties of ESI Liaison:** Each ESI Liaison will be knowledgeable about and
 22 responsible for discussing their respective ESI; will be or have reasonable access to
 23 personnel who are knowledgeable about the technical aspects of e-discovery, including the
 24 location, nature, accessibility, format, collection, search methodologies, and production of
 25 ESI in this matter. The parties will rely on the Liaisons, as needed, to confer about ESI and
 26 to help resolve disputes without court intervention.

27 **IV. GENERAL PROVISIONS**

28 **A. Limitations & Non-Waiver:** Pursuant to the terms of this ESI Protocol & Search
 29 Methodology Order, information regarding search process and ESI practices may be
 30 disclosed, but compliance with this ESI Protocol & Search Methodology Order does not
 31 constitute a waiver, by any Party, of any objection to the production of particular ESI for
 32 any reason, including that it is irrelevant, undiscernable, or otherwise inadmissible, unduly
 33 burdensome or not reasonably accessible, or privileged, nor does it constitute a waiver of
 34 any right to discovery by any Party. Nothing in this ESI Protocol & Search Methodology
 35 Order shall be construed to affect the discoverability of information or the admissibility of
 36 discoverable information. Nor shall anything in this ESI Protocol & Search Methodology

1 Order be construed to affect the authenticity of any document or data. All objections to the
 2 discoverability, admissibility, authenticity, confidentiality, or production of any documents
 3 and ESI are preserved and may be asserted at any time. For the avoidance of doubt, a Party's
 4 compliance with this ESI Protocol & Search Methodology Order will not be interpreted to
 5 require disclosure of information potentially protected by the attorney-client privilege, the
 6 work product doctrine, or any other applicable privilege. All Parties preserve all such
 7 privileges and protections, and all Parties reserve the right to object to any such privileges
 8 and protections.

9
 10 **B. Confidential Information:** For the avoidance of doubt, nothing herein shall
 11 contradict the Parties' rights and obligations with respect to any information designated as
 12 confidential under the Protective Order (Dkt. 178).

13
 14 **C. Preservation:** The Parties agree that they shall continue to take reasonable steps to
 15 preserve relevant documents and ESI in accordance with their obligations under applicable
 16 law. The Parties will meet and confer regarding the scope of preservation, including
 17 custodians, data sources, date ranges, and categories of information that have been or should
 18 be preserved in connection with this Litigation and those that are not reasonably accessible
 19 or need not be preserved because of undue burden or cost or proportionality. By preserving
 20 or producing information for the purpose of this Litigation, the Parties are not conceding that
 21 such material is discoverable or admissible.

22 **V. GENERAL PRODUCTION FORMAT PROTOCOLS**

23
 24 **A. TIFFs:** Except for structured data, all production images will be provided as a black-
 25 and-white, single-page Group IV TIFF of at least 300 DPI resolution with corresponding
 26 multi-page text and necessary load files. Each image will have a file name that is the unique
 27 Bates number of that image, pursuant to Paragraph II(E). Original document orientation and
 28 attributes should be maintained to the extent reasonably practicable and technologically
 possible for a producing Party's vendor (*i.e.*, portrait to portrait and landscape to landscape).
 The imaged data shall retain all attributes of the native or hard-copy file, such as document
 breaks, to the extent reasonably practicable. To the extent reasonably practicable, produced
 TIFF images will show all text and images that are visible in the form in which the electronic
 document was last saved, with the exception of redacted portions. Documents that are
 difficult to render in TIFF because of technical issues, or any other documents that are
 impracticable to render in TIFF format, may be produced in their native format with a
 placeholder TIFF image stating: "Document Produced Natively." A producing Party retains
 the option to produce ESI in alternative formats, which may include native format, or a
 combination of native and TIFF formats.

29
 30 **B. Text Files:** Each ESI item produced under this ESI Protocol & Search Methodology
 31 Order shall be accompanied by a text file as set out below. All text files shall be provided as

1 a single document level text file for each item, not one text file per page. Each text file shall
 2 be named to use the Bates number of the first page of the corresponding production item.

3 i. **OCR:** A producing Party shall scan and OCR paper documents. The Parties will
 4 endeavor to generate accurate OCR and will utilize OCR processes and technology
 5 of sufficient quality to enable the generation of utilizable text files. OCR text files
 6 should indicate page breaks where possible. When OCR is used by a producing
 7 Party, the Parties acknowledge that, due to poor quality of the originals, not all
 8 documents lend themselves to the generation of accurate OCR. For redacted
 9 documents, the document shall undergo OCR after the text has been redacted in
 10 order to remove redacted text.

11 ii. **ESI:** With the exception of redacted documents, emails and other ESI will be
 12 accompanied by extracted text taken from the electronic file itself, where available.
 13 For redacted documents, the text files shall not contain the text of the redacted
 14 portions.

15 **C. Production of Native Items:** Spreadsheet-application files (e.g., MS Excel),
 16 presentation files (e.g., MS PowerPoint), personal databases (e.g., MS Access), XML files,
 17 and multimedia audio/visual files such as voice and video recordings (e.g., .wav, .mpeg, and
 18 .avi), and other documents that are difficult to render in TIFF shall be produced in native
 19 format if reasonably practicable. When producing the above file types in native format, the
 20 producing Party shall produce a single-page TIFF slip sheet indicating that a native item was
 21 produced. The corresponding load file shall include NativeFileLink information for each
 22 native file that is produced. Through the pendency of the Litigation, the producing Party
 23 shall exercise reasonable, good faith efforts to maintain all preserved and produced native
 24 files in a manner that does not materially alter or modify the file or the metadata. Where
 25 native items need to be redacted, they may be redacted in their native formats with each
 26 redaction clearly indicated, and produced in their native formats.

27 **D. Requests for Other Native Files:** Other than as specifically set forth above, a
 28 producing Party need not produce documents in native format. If a Party would like a
 particular document produced in native format and this ESI Protocol & Search Methodology
 Order does not require the production of that document in its native format, the Party making
 such a request shall explain the reason for its request that the document be produced in its
 native format. The requesting Party will provide a specific Bates range for documents it
 wishes to be produced in native format. The parties shall meet and confer to attempt to
 resolve the problem. Any native files that are produced should be produced with a link in
 the NativeLink field, along with all extracted text and applicable metadata fields set forth in
 Appendix 1.

1 **E. Bates Numbering:**

2 1. All images must be assigned a Bates number that must always: (1) be unique across
 3 the entire document production; (2) maintain a constant prefix and length (ten-
 4 digits and 0-padded) across the entire production; (3) contain no special characters,
 5 embedded spaces, hyphens, or underscores; (4) be sequential within a given
 6 document; and (5) identify the producing Party. To the extent reasonably
 7 practicable, the Bates number must also maintain consistent numbering across a
 8 family of documents.

9 2. If a Bates number or set of Bates numbers is skipped in a production, the producing
 10 Party will so note in a cover letter or production log accompanying the production.

11 3. The producing Party will brand all TIFF images at a location that does not obliterate
 12 or obscure any part of the underlying images.

13 **F. Parent-Child Relationships:** Parent-child relationships (*i.e.*, the association
 14 between an attachment and its parent document) that have been maintained in the ordinary
 15 course of business should be preserved. For example, if a Party is producing a hard copy
 16 printout of an email with its attachments, the attachments should be processed in order
 17 immediately following the e-mail.

18 **G. Entire Document Families:** Subject to Paragraph V(K)(1) below, entire document
 19 families must be produced, even if only the parent email or an attachment to an email is
 20 responsive, except (1) junk files and non-user-created content routinely excluded during
 21 processing, and (2) documents that are properly logged and withheld on the basis of attorney-
 22 client privilege or work product protection.

23 **H. Load Files:** All production items will be provided with a delimited data file, or “load
 24 file,” which will include both an image cross-reference load file (such as an Opticon file)
 25 and a metadata (.dat) file with the metadata fields identified below on the document level to
 26 the extent available. The load file must reference each TIFF in the corresponding production.
 27 The total number of documents referenced in a production’s data load file should match the
 28 total number of designated document breaks in the image load files in the production.

29 **I. Color:** Documents or ESI containing color need not be produced initially in color.
 30 However, if an original document or ESI item contains color markings and it is necessary to
 31 see those markings in their original color to understand the meaning or content of the
 32 document, then the requesting Party may, in good faith, request that a reasonable number of
 33 documents or ESI items be produced in its original colors. For such documents, the
 34 requesting Party shall provide a list of Bates numbers of the imaged documents sought to be
 35 produced in color. The production of documents and/or ESI in color shall be made in single-
 36 page JPEG format (300 DPI). Requests that a document be produced in color will not be
 37 unreasonably denied by the producing Party. If a producing Party wishes to object, it may

1 do so by responding in writing and setting forth its objection(s) to the production of the
 2 requested document in color. Documents must be produced in color, or a written objection
 3 to their production must be provided, within a reasonable timeframe of receiving a written
 request as set forth in this Paragraph.

4 **J. Confidentiality Designations:** If a particular paper document or ESI item qualifies
 5 for confidential treatment pursuant to the terms of the Protective Order entered by the Court
 6 in the Litigation (Dkt. 178), or to any applicable federal, state, or common law (e.g.,
 7 Personally Identifiable Information or Protected Health Information), the designation shall
 8 be branded on the document's image at a location that does not obliterate or obscure any part
 9 of the underlying images. To the extent reasonably practicable, this designation also should
 10 be included in the appropriate data field in the load file. For documents produced in native
 11 format with image placeholders, the placeholder image for the native file should be branded
 12 with the appropriate confidentiality designation to the extent possible. Requesting Parties
 shall take reasonable steps to ensure that the confidentiality claim follows the document
 regardless of whether the designation imprints on the file when viewed in printed form.
 Failure to comply with the procedures set forth in this ESI Protocol & Search Methodology
 Order, any protective order or confidentiality order, or any confidential stipulation shall not
 waive any protection or confidential treatment.

12 **K. Redactions**

13 1. **Personal Data Redactions:** A producing Party may redact personal
 14 information to the extent that the information falls within one of the
 15 following categories:

16 a. the information relates to medical or health issues of an individual; or
 17 b. social security numbers, taxpayer-identification numbers, driver's
 18 license numbers, birthdates, credit card information, passport
 19 numbers, financial-account numbers or other bank account
 20 information, or personal passcodes. Such redactions should be
 21 identified as "Redacted – Personal Data" on the document.
 22
 23
 24
 25
 26

27

28

1 **L. Production Media & Protocol:** Documents shall be produced by sharefile or FTP
 2 link, unless otherwise agreed by the parties or required to effectuate the production.

3 **VI. PAPER DOCUMENT PRODUCTION PROTOCOLS**

4 **A. Scanning:** A producing Party shall scan and OCR paper documents.

5 **B. Coding Fields:** The following information shall be produced in the load file
 6 accompanying production of paper documents produced by scan and OCR to the
 7 extent reasonably practicable: (a) BegBates, (b) EndBates, (c) BegAttach, (d)
 8 EndAttach, (e) Custodian, (f) Confidentiality, and (g) Redacted (Y/N). Additionally,
 all paper documents will be produced with a coding field named “Paper Document”
 marked with a “Y.”

9 **C. Unitization of Paper Documents:** Paper documents should be logically unitized for
 10 production to the extent reasonably practicable.

11 **VII. ESI METADATA FORMAT AND PROCESSING ISSUES**

12 **A. System Files:** ESI productions may be de-NISTed using the industry standard list
 13 of such files maintained in the National Software Reference Library by the National
 Institute of Standards & Technology as it exists at the time of de-NISTing.

14 **B. Metadata Fields and Processing:** Appendix 1 sets forth the minimum metadata
 15 fields that must be produced. To the extent that metadata does not exist, is not reasonably
 16 accessible or available or would be unduly burdensome to collect, nothing in the ESI
 17 Protocol shall require any party to extract, capture, collect or produce such data, with the
 18 exception of the following fields to the extent reasonably practicable: (a) BegBates,
 (b) EndBates, and (c) Confidentiality, which should be populated regardless of whether the
 fields can be populated pursuant to an automated process.

19 **1. Date and Time:** No party shall intentionally modify the date or time as
 20 contained in any original ESI.

21 **2. Auto Date/Time Stamps:** To the extent reasonably practicable if there is an
 22 automatic (non-manual) way of doing so without a party needing to find a custom solution,
 ESI items shall be processed so as to preserve the date/time shown in the document as it
 was last saved, not the date of collection or processing.

23 **C. Redaction:** For redacted documents, text files shall not contain the text of the
 24 redacted portions. Any non-privileged metadata fields reasonably available shall be

1 provided.

2 **D. Email Collection and Processing:**

3 1. **Email Threading:** The Parties may use email thread suppression to review only
 4 the most inclusive threads for responsive material..

5 2. **Email Domains:** Producing Parties may utilize an ESI search process to identify
 6 categories of documents, such as emails from domains typically associated with
 7 junk email, such as fantasy football-related emails, retailer advertising, and
 8 newsletters or alerts from non-industry sources. To the extent a Party opts to
 9 exclude uniquely identifiable domain names as part of its initial filter of potentially
 10 responsive documents, the Parties agree to disclose domain names excluded under
 11 this Paragraph.

12 **E. De-duplication:** A producing Party may de-duplicate any file globally (*i.e.*, across
 13 document custodians) or horizontally at the “family” level (*i.e.*, families should not be
 14 broken due to de-duplication). Each party may also de-duplicate emails in such a way as to
 15 eliminate earlier or incomplete chains of emails and therefore produce only the most
 16 complete iteration of an email chain.

17 Duplicate electronic documents shall be identified by a commercially accepted industry
 18 standard (*e.g.*, MD5 or SHA-1 hash values) for binary file content. All electronic documents
 19 bearing an identical value are a duplicate group. The producing Party shall use reasonable
 20 efforts to produce only one document image or native file for duplicate ESI documents
 21 within the duplicate group to the extent practicable. The producing Party is not obligated to
 22 extract or produce entirely duplicate ESI documents. For any de-duplicated document, the
 23 producing Party shall populate the following metadata fields, as set forth in Appendix 1:
 24 DupCust, CustodianOther, or CustodianAll.

25 **F. Hidden Text:** ESI items shall be processed, in a manner that preserves hidden
 26 columns or rows, hidden text, worksheets, speaker notes, tracked changes, and comments.

27 **G. Embedded Objects:** Embedded objects will not be processed in such a way that they
 28 are extracted, except as to standalone Microsoft Excel, Microsoft Word, or similar
 29 documents. Such standalone Microsoft Excel spreadsheets (.xls), Microsoft Word, or similar
 30 documents that are embedded in Microsoft Word documents will be extracted as separate
 31 documents and treated as attachments to the document using a commercial software that can
 32 extract in an automated (non-manual) way. The Parties agree that other embedded objects,
 33 including, but not limited to, logos, icons, emoticons, and footers, may be culled from a
 34 document set and need not be produced as separate documents by a producing Party (*e.g.*,
 35 such embedded objects will be produced within the document itself, rather than as separate
 36 attachments).

H. Hyperlinked Files: A producing Party will conduct a reasonable search for responsive documents within any folder that employees of the producing Party identify as likely to contain hyperlinked documents responsive to agreed-upon document requests. To the extent the requesting Party identifies a reasonable number of additional hyperlinks within the documents that the other produces that they wish to examine, the Parties will meet and confer about attempting to obtain this reasonable set of hyperlinked documents.

I. Password-Protected, Encrypted, or Proprietary-Software Files: With respect to any ESI items that are password-protected or encrypted within the scope of review, the producing Party will take reasonable steps based on industry standards to break the protection so that the documents can be reviewed and produced if appropriate. In the event that encrypted or password-protected documents, which a party identifies are reasonably likely to be responsive to a document request, remain for a particular custodian after such reasonable efforts have been made, the producing Party shall advise the requesting Party and identify a reasonable number of such documents for the producing Party to attempt to open. The Parties shall meet and confer regarding the next steps, if any, with respect to such ESI.

VIII. SEARCH

The parties agree that in responding to an initial Fed. R. Civ. P. 34 request, or earlier if appropriate, they will meet and confer about methods to search ESI in order to identify ESI that is subject to production in discovery and filter out ESI that is not subject to discovery.

A. Iterative Process: The producing Party will propose a set of search terms and the requesting Party may provide proposed revisions and additions to the producing Party's search terms within 5 business days. The Parties will meet and confer on revising the search terms and the Parties will cooperate in good faith regarding the disclosure and formulation of appropriate search terms. The requesting Party shall not unduly delay these negotiations and must respond as soon as practicable regarding search terms in order for the producing Party to be able to meet deadlines. The producing Party and the requesting Party will work together in good faith to reasonably narrow the number of documents returned via search term hits and narrow the number of irrelevant documents captured as a result of the search terms. To the extent any disputes remain concerning the use of specific proposed search terms after good faith negotiations have occurred, either Party may request the assistance of the Court in resolving such disputes, but must proceed with haste so as not to block the producing Party from the ability to meet deadlines. The requesting Party can request the producing Party to consider applying additional search terms and the producing Party is under no obligation to run the terms. The Parties shall engage in good faith negotiations to resolve any disputes regarding a request for application of additional search terms. To the extent such good faith negotiations fail, either Party may request the assistance of the Court in resolving such a dispute.

1 **B. TAR/CAL:** Should the parties desire to leverage Technology Assisted Review
 2 (“TAR”) or Continuous Active Learning (“CAL”), search terms may be applied with these
 3 technologies. The Parties will meet and confer on any issues or disputes regarding the use
 4 of TAR/CAL. If a party uses TAR/CAL, it will disclose the following information: (a) the
 5 name of the TAR/CAL software and vendor, (b) a general description of the producing
 6 Party’s TAR/CAL process (c) a general description of the categories or sources of the
 7 documents included or excluded from the TAR/CAL process, (d) population in the
 8 TAR/CAL model, and (e) what quality control measures will be taken. The Parties will
 9 meet and confer regarding validation procedures, including whether a validation protocol
 10 will be needed.

11 **C. Structured Data:** To the extent a response to discovery requires production of
 12 discoverable ESI contained in a structured database, the Parties shall meet and confer in an
 13 attempt to agree upon a set of queries to be made for discoverable information and
 14 generate a report in a reasonably usable and exportable electronic file for review by the
 15 requesting Party.

16 **IX. PHASING**

17 When a party propounds discovery requests pursuant to Fed. R. Civ. P. 34, the parties
 18 agree to phase the production of ESI. Following the initial production, the parties will
 19 continue to prioritize the order of subsequent productions.

20 **X. CLAIMS OF PRIVILEGE AND REDACTIONS**

21 **A. Production of Privilege Logs:** Except as provided otherwise below, for any
 22 document withheld in its entirety, the producing Party will produce privilege logs in MS
 23 Excel format or any other format that permits electronic sorting and searching, at a time
 24 mutually agreed upon by the parties.

25 **B. Exclusions from Logging Potentially Privileged Documents:** The following
 26 categories of documents do not need to be contained on a producing Party’s privilege log,
 27 unless good cause exists to require that a Party do so.

28 1. Any communications exclusively between a producing Party and its outside
 29 counsel, any non-testifying experts in connection with specific litigation, or, with
 30 respect to information protected by Federal Rule of Civil Procedure 26(b)(4),
 31 testifying experts in connection with specific litigation.

32 2. Any privileged materials or work product created by a Party’s outside counsel, any
 33 non-testifying experts in connection with specific litigation, or, with respect to
 34 information protected by Federal Rule of Civil Procedure 26(b)(4), testifying
 35 experts in connection with specific litigation.

C. Privilege Log Requirements:

1. To the extent applicable, each Party's privilege log must provide objective metadata (to the extent it is reasonably available and does not reflect privileged or protected information), an indication of the privilege or protection being asserted, identify any associated persons who are attorneys, and provide a brief description of the privileged or protected material.
 - a. Objective metadata includes the following (as applicable to the document types as shown in Appendix 1):
 - i. A unique privilege log identifier
 - ii. Custodian
 - iii. CustodianOther or CustodianAll (if applicable)
 - iv. File Name (unless privileged itself)
 - v. Email Subject (unless privileged itself)
 - vi. Author
 - vii. From
 - viii. To
 - ix. CC
 - x. BCC
 - xi. Date Sent
 - xii. Time Sent
 - xiii. Date Received
 - xiv. Date Created
 - xv. Bates Number (for documents produced as WIF slipsheets)
 - b. In addition to the objective metadata fields, a Party must also:
 - i. Indicate which privilege or protection is being asserted;
 - ii. To the extent such information is not contained in the objective metadata for a document that the responding Party has identified as significant, a responding Party can request that the producing Party provide the author and date of the document, and the parties will meet and confer about adding such information manually.

- iii. Identify which persons associated with the document (*i.e.*, senders, recipients, or authors) are attorneys; and
- iv. Provide a brief description of the privileged or protected material.

c. With respect to the “Email Subject” or “File Name” field, the producing Party may substitute a description of the document where the contents of these fields may reveal privileged information. In the privilege log(s), the producing Party shall identify each instance in which it has modified the content of the “Email Subject” or “File Name” field.

D. Documents Redacted for Privilege: Redacted documents need not be logged as long as the nature of the privilege asserted is noted on the face of the document in the redacted area. Furthermore, for emails, the objective metadata (*i.e.*, to, from, cc, bcc, recipients, date, and time) shall not be redacted, unless the privilege or protection is contained in these fields. In accordance with this Paragraph, the producing Party will undertake reasonable efforts to make limited, line-by-line redactions of privileged or work product information. After receipt of the production, the requesting Party may request in good faith that the producing Party create a privilege log for specific redacted documents, by Bates number, if the basis for the redaction is not clearly indicated on the document. Electronic documents that are redacted shall be identified as such in a “redaction” field in the accompanying data load file.

E. **Challenges to Privilege Claims:** Following the receipt of a privilege log or redacted document, a requesting Party may identify, in writing (by Bates/unique identification number), the particular documents that it believes require further explanation. The producing Party shall respond to such a request. If the Parties cannot arrive at a mutually agreeable solution, then the matter may be brought to the Court.

XI. CLAWBACK ORDER

A. Non-Waiver: Pursuant to Federal Rule of Evidence 502(d), the production of any documents and accompanying metadata (“Protected Documents”), protected from discovery, including under the attorney-client privilege, work product doctrine, opinion work product doctrine, the joint defense or common interest privilege, privacy laws and regulations, or any other immunity from discovery (collectively, “privilege or protection”), shall not be deemed to waive any privilege or protection, including subject matter waiver, associated with such Protected Documents as to the receiving party or any third parties in this or in any other state or federal proceeding solely by virtue of such production or disclosure. Nothing in this Paragraph is intended to or shall serve to limit a Party’s right to conduct a review of any material or information for relevance, responsiveness, and/or segregation of privileged and/or protected information before production.

B. Assertion of a Clawback: Any Party or non-Party may request the return of any Protected Document(s) on the grounds of privilege or protection by identifying it, stating the basis for withholding such material or information from production, and providing any other information that would be listed on a supplemental privilege log, subject to Paragraph XI(C) below.

C. Clawback Process: Federal Rule of Civil Procedure 26(b)(5)(B) shall govern the clawback of Protected Documents on the grounds of privilege or protection. If a Party or non-Party requests the return of such a Protected Document then in the custody of one or more Parties, the possessing Parties shall within 7 business days:

1. Destroy or return to the requesting Party or non-Party the Protected Document(s) and all copies thereof, and expunge from any other document or material information derived solely from the produced material or information; or
2. Notify the producing Party or non-Party that it wishes to challenge the claim of privilege or protection and has sequestered the material until the issue can be resolved. The Parties agree to meet and confer within 3 days regarding the claim of privilege or protection. If, at the conclusion of the meet and confer process, the Parties are still not in agreement, they may bring the issue to the Court. A Party challenging a clawback request under this Paragraph may use the content of the clawed-back document for the sole purpose of filing a motion with the Court under seal, consistent with Local Rule 5, that challenges whether or not the document is privileged or protected.

D. Implementation of a Clawback: Where a Party agrees to or is ordered to destroy a clawed back document, the Party must instruct their e-discovery vendor to delete the document entirely from their e-discovery database and delete other copies of the clawed back document. To the extent that it is not technologically feasible for a receiving Party to destroy a clawed back document (for example, if the clawed-back document is part of a production provided on read-only Production Media such that the clawed-back document cannot be destroyed without destroying the entire Production Media), the Parties will meet and confer as to an acceptable alternative approach.

XII. MODIFICATION

This Stipulated Order may be modified by a Stipulated Order of the parties or by the Court for good cause shown.

IT IS SO STIPULATED, through Counsel of Record.

1
2 Dated: August 16, 2024
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5
6

/s/ *Ari Holtzblatt*
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1 Dated: August 16, 2024

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10 Dated: August 16, 2024

/s/ Stephen J. Teti

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16 sjteti@locklaw.com

17 *Counsel for Plaintiffs*

18 PURSUANT TO STIPULATION, IT IS SO ORDERED.

19 DATED: August 26, 2024

20 _____
21 HON. PETER H. KANG
22 United States Magistrate Judge
23
24
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Appendix 1: ESI Metadata and Coding Fields

| Field Name ¹ | Populated For (Email, Edoc, Calendar, Contact, Cellphone, or All) | Field Description |
|--|--|---|
| BegBates | All | Control Numbers. |
| EndBates | All | Control Numbers. |
| BegAttach | All | Control Numbers (First production Bates number of the first document of the family). |
| EndAttach | All | Control Numbers (Last production Bates number of the last document of the family). |
| Custodian | All | Custodian name (ex. John Doe). |
| DupCust, CustodianOther, or CustodianAll | All | All custodians who were in possession of a de-duplicated document besides the individual identified in the "Custodian" field. |
| LogicalPath | All ESI Items | The directory structure of the original file(s). Any container name is included in the path. |
| Hash Value | All | The MD5 or SHA-1 hash value. |
| NativeFile | All | Native File Link. |
| Email Thread ID | Email | Unique identification number that permits threading of email conversations. For instance, unique MS Outlook identification number ("PR_CONVERSATION_INDEX") is 22 bytes in length, followed by zero or more child blocks each 5 bytes in length, that facilitates use of email threading. |
| EmailSubject | Email | Subject line of email. |
| DateSent | Email | Date email was sent. |
| DateMod | Email, Edoc | Date the document was modified. |
| TimeSent | Email | Time email was sent. |
| TimeZoneUsed | All | Time zone used to process data during document collection and processing. |
| ReceiveTime | Email | Time email was received. |
| To | Email | All recipients that were included on the "To" line of the email. |
| From | Email | The name and email address of the sender of the email. |
| CC | Email | All recipients that were included on the "CC" line of the |

¹ Field Names can vary from system to system and even between different versions of systems. Thus, Parties are to be guided by these Field Names and Field Descriptions when identifying the metadata fields to be produced for a given document pursuant to this ESI Protocol & Search Methodology Order.

| 1 | Field Name ¹ | Populated For (Email, Edoc, Calendar, Contact, Cellphone, or All) | Field Description |
|----|-------------------------|--|--|
| 2 | | | email. |
| 3 | BCC | Email | All recipients that were included on the “BCC” line of the email. |
| 4 | DateCreated | Edoc | Date the document was created. |
| 5 | FileName | Email, Edoc | File name of the edoc or email. |
| 6 | Title | Edoc | Any value populated in the Title field of the document properties. |
| 7 | Subject | Edoc | Any value populated in the Subject field of the document properties. |
| 8 | Author | Edoc | Any value populated in the Author field of the document properties. |
| 9 | DocExt | All | File extension of the document. |
| 10 | TextPath | All | Relative path to the document level text file. |
| 11 | Redacted | All | “X,” “Y,” “Yes,” and “True” are all acceptable indicators that the document is redacted. Otherwise, blank. |
| 12 | Withheld Placeholder | All | To the extent a document is fully withheld (on the basis of privilege or otherwise), this field must be populated with a “Y.” |
| 13 | Privilege Asserted | All | To the extent a document has been withheld on the basis of privilege or redacted on the basis of privilege, the text pertaining to such assertion of privilege shall be included as a metadata field (e.g., “Redacted – Attorney Client Privileged” or “Withheld – Attorney Client Privileged”). |
| 14 | Paper | All | “Y” if document is scanned from hard copy in connection with the collection and production of documents in this matter. |
| 15 | Confidentiality | All | Indicates if document has been designated as “Confidential” or “Highly Confidential” under the Protective Order. |
| 16 | Attachment Count | Email, Edoc | Identifies the number of attachments to an email (if present/applicable). |
| 17 | Page Count | All | Indicates the number of pages within the document. |
| 18 | Attachment Names | Email, Edoc | Identifies the file names of all attachments to an email (if present/applicable). |

| 1 | Field Name ¹ | Populated For (Email, Edoc, Calendar, Contact, Cellphone, or All) | Field Description |
|---|-------------------------|--|--|
| 2 | Calendar Date Begin | Calendar | Identifies the begin date of a calendar entry (if present). |
| 3 | Calendar Date End | Calendar | Identifies the end date of a calendar entry (if present). |
| 4 | Calendar Time Begin | Calendar | Identifies the begin time of a calendar entry (if present). |
| 5 | Calendar Time End | Calendar | Identifies the end time of a calendar entry (if present). |
| 6 | Production Volume | All | Identifies the unique production volume ID of the delivery (e.g., ABC001). |
| 7 | Is Hyperlinked | Email, Edoc | Descriptor for documents that are shared via hyperlink within another document as distinct from embedded or attached documents (where applicable). |

ATTORNEY ATTESTATION

I, Ari Holtzblatt, am the ECF User whose ID and password are being used to file this joint stipulation. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that concurrence in the filing of this document has been obtained from each signatory.

Dated: August 22, 2024

By: /s/ Ari Holtzblatt
Ari Holtzblatt